



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME LOCAL 3657, CONWAY POLICE :
DEPARTMENT EMPLOYEES :

Complainant :

v. :

TOWN OF CONWAY and CONWAY POLICE :
COMMISSION :

Respondent :

CASE NO. A-0511:6

DECISION NO. 93-51

APPEARANCES

Representing AFSCME, Local 3657:

Vincent Wenners, Esq., Counsel

Representing Town of Conway & Conway Police Commission:

David Hastings, Esq., Counsel

Also appearing:

Raymond E. Leavitt, Jr., Selectman
Robert F. Porter, Police Commissioner
Robert R. Tawney, Chief Negotiator, Town
Jim Somerville, Conway Town Manager
James C. Anderson, Staff Representative, AFSCME
Paula Foster, Conway Police Department
John P. Reed, Conway Police Department

BACKGROUND

Council 93, AFSCME, Local 3657 (Union) filed unfair labor practice (ULP) charges and a request for a cease and desist order on November 2, 1992 against the Conway Police Commission (Commission). The Commission filed its answer on November 17, 1992 after which the matter was heard by the PELRB on January 21, 1993. The PELRB issued Decision No. 93-15 on February 11, 1993, which, inter alia, contained a cease and desist order, under the PELRB's

authority found at RSA 273-A:6, III, directing the Commission not to implement nine noticed layoffs until the issue of those layoffs might be plead and heard on the merits. The issue of the pending layoffs was subsequently plead in the form of Case No. A-0511:9 filed on February 16, 1993. After Decision No. 93-15 was issued on February 11, 1993, the Commission filed a Motion for Reconsideration and Motion to Join Town of Conway on February 19, 1993. These two motions were granted by the PELRB on March 4, 1993 (Decision No. 93-31). In the interim, the Commission and Town filed two motions with the New Hampshire Supreme Court to suspend the PELRB's order in Decision No. 93-15. On March 15, 1993, the Court responded, noting "nowhere in that motion do the appellants request that the [PELRB] suspend its order..., nor do the pleadings before this court indicate that the appellants have otherwise asked the [PELRB] to suspend or stay its order." Finding that the appellants had not exhausted their administrative remedies, the court denied their motions to suspend. On March 16, 1993, the Town filed a Motion to Amend Motion for Reconsideration to Have Order of Cease and Desist Temporarily Suspended. The Union filed an objection to the foregoing motion on March 26, 1993. That motion, the objection thereto, and the granted rehearing of Decision No. 93-31 (Case No. A-0511:6) were heard by the PELRB on April 2, 1993.

FINDINGS OF FACT

1. The findings of fact set forth in Decision No. 93-15 are reaffirmed and incorporated by reference.
2. In proceedings before the PELRB involving these same parties in Case No. A-0511:9 (also on April 2, 1993 and of which the PELRB takes notice), witnesses appearing for both the Union (Anderson) and the Town (Porter and Leavitt) stated that the 1993 Conway Town Meeting, held on March 20, 1993, restored funds for the health insurance program applying to bargaining unit employees. Anderson, a Union representative, went further to say that unit employees are "now working under the old [expired] contract [and] getting benefits under the old [expired] contract."
3. The Town/Commission complied with the PELRB's cease and desist directive by rehiring all employees subject to layoff, as further identified in Finding No. 9 in Decision No. 93-15, notwithstanding that layoffs did occur between the effective date(s) thereof and the date of the PELRB's cease and desist order in Decision 93-15, namely February 11, 1993. Employees rehired from layoff pursuant to the PELRB's order returned to work, according to Police Commission Chairman Porter, without any accrued vacation since they were compensated for that

benefit as part of the pay tendered at time of layoff for accrued benefits.

DECISION AND ORDER

Given the rehiring or reinstatement of laid off unit employees and the testimony pertaining to the 1993 Conway Town Meeting's having funded or reinstated insurance benefits as noted in Finding No. 2, above, there is no continuing need for the cease and desist order contained in Decision No. 93-15. It is the understanding of the PELRB that the status quo, as described to us in testimony taken on April 2, 1993, will be maintained during the pendency of the current negotiations. Accordingly, the cease and desist Order of February 11, 1993 as it applies to laid off (or about to be laid off) bargaining unit members is VACATED.

So ordered.

Signed this 28th day of April, 1993.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
Members Seymour Osman and Arthur Blanchette present and voting.